IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 1850 of 2006(T)

EA 673/05 IN EP 510/04 IN
OS.937/1989 of II ADDL.M.C.,NEYYATTINKARA
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PETITIONER:

DASAN NADAR SURENDRAN,
RESIDING AT KADAYARA PUTHEN VEEDU, KALLAMPOTTA,
UDIYANKULANGARA AMSOM, CHENKAL VILLAGE.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.SREEKANTH.K.R
SRI.JIBU P THOMAS
SRI.SUNIL J.CHAKKALACKAL

RESPONDENTS:
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1. PARAMESWARAN PILLA THANKAPPAN NAIR,
RESIDING AT THANKAPPA BHAVAN, NOCHIYOOR DESOM,
CHENKAL VILLAGE.

2. CLARA, W/O. SADAYYAN NADAR,
RESIDING AT AVANTHARUMPARA PUTHEN VEEDU,
KEEZHKOLLA DESOM.

R1 BY ADV. SRI.L.MOHANAN
SMT.LIGEY ANTONY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 1850 OF 2006

Dated this the 7th day of September, 2007

JUDGMENT

Raising several attractive questions including the question whether a decree can be executed any number of times even after full satisfaction has been recorded in earlier execution proceedings, the judgment debtor has filed this Writ Petition under Article 227 of the Constitution of India, impugning Ext.P1 order passed by the Additional Munsiff's Court, Neyyattinkara. The decree against the petitioner was one of declaration of the respondents' title and possession over the decree schedule property having an extend of 38 cents and shown in Ext.C1(a) plan as STJK plot, a prohibitory injunction restraining the petitioner from trespassing into the above property and from interfering in any manner with respondents' title and possession over the property. The decree is also for fixation of boundaries permits putting up of boundary along with the line KJ under the supervision of an Advocate Commissioner. The petitioner alleges that in a previous execution petition, namely EP No.223 of 2006, the work of putting up of boundary was executed under the supervision of an Advocate Commissioner with the assistance of the Surveyor and that execution petition was closed after recording the satisfaction of the decree for putting up the boundary.

Petitioner complains that the present EP 510 of 2004 has been filed by the respondents seeking the same relief to have the boundary wall put up along the line “KJ” shown in Ext.C1(a) plan attached to the decree by deputing an Advocate Commissioner. On noticing the present execution petition, the petitioner filed objections contending that the present execution petition is barred by principles of res judicata and also by limitation. The grievance of the petitioner is that even before the question as to how far the above principles are applicable in this case is decided the execution court has passed Ext.P1 order appointing a Commissioner for supervising the construction of the boundary wall through line “KJ” as shown in Ext.C1(a) plan observing that, prior execution is not a bar for execution of a decree.

2. I have heard the submissions of Sri.V.Chitambaresh, learned counsel for the judgment debtor and Sri.L.Mohanan, learned counsel for the respondent decree holder. Mr.Chitambaresh would submit on the authority of the judgment of the Supreme Court in **Mohanlal Goenka v. Benoy Kishna Mukherjee & others** [AIR 1953 SC 65] that the principles of res judicata are applicable to the execution proceedings. In the previous execution petition the court had recorded satisfaction of the decree directing putting up of the boundary wall. It is therefore not open to the decree holder to seek execution of the very same decree once

again. The decree is also for perpetual injunction and if respondents have a genuine grievance that decree of injunction has been violated by the petitioner, they may have to invoke the procedure under Rule 32 of Order XXI alleging disobedience of the decree of injunction. The view of the learned Munsiff that prior execution will not bar a subsequent execution cannot receive acceptance and the learned court is not justified in evading answer to the serious contention raised by the petitioner on the basis of principles of res judicata.

3. Sri.L.Mohanan, learned counsel for the respondent would submit that it is not correct to say that the court has recorded satisfaction of the decree for fixation of boundary. In the previous execution petition the court had deputed an Advocate Commissioner to supervise the construction of the boundary wall. Under her supervision and with the assistance of the Taluk Surveyor, the wall was constructed and report was submitted to the court. On the basis of that report, the court only closed the execution petition. Now what the petitioner has done is to demolish that wall and in that way to violate the decree openly bringing the judicial system to ridicule. The order of the learned Munsiff is absolutely necessary for undoing a blatant illegality which was perpetrated by the respondents. The said order is not liable to be interfered with by this Court under the visitorial jurisdiction of this Court

which is expected to be invoked to avert injustice and failure of justice.

3. I have heard the rival submissions made at the Bar keeping in mind the applicable law as enunciated by various precedents including the judgment of the Supreme Court which was cited before me by Mr.Chitambaresh. Considering the controversy between the learned counsel as to the manner in which the previous execution petition was disposed of, I called for a report from the court below and the report reveals that in the previous execution petition the work of construction of the boundary wall was got done under the supervision of an Advocate Commissioner with the assistance of a Surveyor and the court on considering the Commission's report passed an order recording satisfaction of the decree to the extent it directs putting up of boundaries. It was thereafter that the court closed that execution petition. Thus the report of the learned Munsiff will show that at least one of the questions raised by Mr.Chitambaresh in this Writ Petition as to whether a decree can be executed in a number of times even if a full satisfaction has been recorded in the earlier execution proceedings is eligible for an answer. More specifically, the answer which is seen given by the learned Munsiff that previous execution petition is not a bar to a subsequent execution petition.

4. Sri.V.Chitambaresh is certainly right in his submission founded

as the same is on the basis of the judgment of the Supreme Court in **Mohanlal Goenka v. Benoy Kishna Mukherjee & others**(supra) that the principles of res judicata which are applicable to the execution proceedings and that there cannot be successive petitions for execution of a decree which is already recorded as fully satisfied. I am also in agreement with his submission that the approach of the learned Munsiff to the above question which was raised through the statement of objections was a little casual. Just because an Execution petition is not barred by limitation, it cannot be said that an Execution Petition for re-executing a decree which is already executed in full, is maintainable. But, at the same time, according to me, there are excellent reasons for sustaining the order presently passed by the Execution Court. A copy of the execution petition was placed before me for my perusal. It is seen there from that it has been specifically alleged that after closure of the previous Execution Petition on the basis of the Commissioner's report and plan fixing the boundary recording satisfaction of the decree, the judgment debtor forcibly destroyed boundary, thereby necessitating the present execution petition. Virtually, the prayer in the Execution Petition is that the previous order recording full satisfaction of the decree be reviewed. Under the present order, precisely what has been done by the learned Munsiff is to pass order after reviewing the previous order.

Such course was absolutely necessary in the interest of justice. A judgment debtor who demolishes a boundary put up in execution of a decree for fixation of boundary is not entitle to insist that the decree holder must institute a fresh suit on the premise that the decree in his favour is already executed and what has arisen is only a fresh cause of action. Accepting the said argument will be making a mockery of justice. The instant order has been passed reviewing the previous order and I do not find any warrant for setting aside the same in the supervisory jurisdiction of this Court under Article 227 since in my opinion, the order only advances justice and interference with the same will result in injustice.

It will also be noticed that no legal prejudice has been occasioned to the respondent by the present order. Execution Petition is not barred by limitation. Decree is for prohibitory injunction also and could have been extended as if it were one for mandatory injunction.

The Writ Petition is dismissed for all the above reasons. No costs.

PIUS C. KURIAKOSE, JUDGE

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